

# SCHOOL INTERROGATION

## **N.C., a Child Under Eighteen v. Com., 396 S.W.3d 852 (Ky. 2013)**

**FACTS:** A teacher at Nelson County High School found an empty pill bottle on the floor in the boy's bathroom. The bottle indicated it was for N.C. and had contained hydrocodone. The school investigated the matter and determined that N.C. had given away some pills. N.C. was removed from class and brought to the office by Deputy Sheriff Campbell (the School Resource Officer) and the Assistant Principal, Glass. N.C. was questioned in the closed office with the SRO and Glass the only other persons present. Although initially denying he knew why he was there, N.C. finally admitted that he "did something stupid." He stated he had the pills with him because of recent dental surgery; he took one and gave two away to a fellow student. Glass told him that he was "subject to school discipline" and N.C. was ultimately expelled. After Glass left the room, Campbell told N.C. that "he would be charged with a crime and explained the criminal consequences." N.C. was ultimately charged as a Youthful Offender because of prior criminal acts.

N.C. was charged in juvenile court and requested suppression. At the hearing, Deputy Campbell testified that he had been in clothing that identified himself as a member of the Sheriff's Office and was armed. He had been the SRO for four years. The deputy did not tell N.C. he was free to leave the office during the questioning or give him Miranda<sup>1</sup> warnings. The Court denied N.C.'s motion and he took a conditional guilty plea. N.C. then appealed and ultimately, the Kentucky Supreme Court granted review.

**ISSUE:** If a student is being questioned at school, by or in the presence of a law enforcement officer, must they be given Miranda warnings?

**HOLDING:** Yes

**DISCUSSION:** The Court framed the question as whether "a student is entitled to the benefit of the Miranda warnings before being questioned by a school official in conjunction with a law enforcement officer" when criminal charges, rather than just school discipline, is possible. The Court began by reviewing Miranda, noting that the threshold inquiry is whether the subject is both being questioned by law enforcement and is in custody. But since that initial rule was established, the Court has held that in some situations, interrogation by non-law enforcement state actors may also be subject to the Miranda<sup>2</sup> rule. The Court also looked to a case from another state, in which the

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966)

<sup>2</sup> See Mathis v. U.S., 391 U.S. 1 (1968) (IRS agent); Buster v. Com., 364 S.W.3d 157 (Ky. 2012) (social worker); Harsfield v. Com., 277 S.W.3d 239 (Ky. 2009) (SANE).

court ruled that when law enforcement isn't present, and the child is not subjected to criminal charges, Miranda is not implicated. The Court concluded that the "law enforcement" requirement in Miranda may be contextual, or more related to function than to title."

The question as to whether a person is in custody is objective, and at "its most basic," custody "requires a formal arrest or restraint."<sup>3</sup> The trial court must "determine the circumstances surrounding the interrogation and, given those circumstances, to decide whether a reasonable person would believe he could terminate the interrogation and leave."<sup>4</sup>

The second step is whether the statement was "voluntarily given," and absent Miranda warnings, when they are required, statements will be considered inadmissible as involuntary. This question was initially addressed in a pre-Miranda case, Fikes v. Alabama.<sup>5</sup> Following Miranda, warned statements will lean it toward the statements being given voluntarily, but that is "not the end of the inquiry." In Schneckloth v. Bustamonte, the Court laid out the "totality of the circumstances" test which views "knowledge of the right to refuse consent as a factor."<sup>6</sup>

With respect to juveniles, the Court looked to In re Gault.<sup>7</sup> In Gault, the Court reviewed the "development of juvenile legal issues to that point in time," and noted that when a juvenile is adjudicated for a public offense, the child's liberty can be restrained for many years. As such, the Court agreed that juveniles are entitled to due process, just as adults. The Court noted that "admissions and confessions of juveniles require special caution because a juvenile cannot be judged by the more exacting standards of mature adults." The Gault Court ruled that the "constitutional privilege against self-incrimination is applicable to the case of juveniles as it is with respect to adults."

The Court looked to J.D.B., in which the Court "did not even question whether Miranda applied, but looked directly at the question of whether the juvenile was in custody." J.D.B. was 13 when interrogated at school, threatened with juvenile detention and never given Miranda warnings. The J.D.B. Court noted that juveniles are particularly susceptible to the "influence of authority figures and the naturally constraining effect of being in the controlled setting of a school with its attendant rules." The Court framed the custody question as: "what were the circumstances surrounding the interrogation, and given those circumstances, would a reasonable person believe he could terminate

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<sup>3</sup> Thompson v. Keohane, 516 U.S. 99 (1995).

<sup>4</sup> J.D.B. v. North Carolina, 131 S.Ct. 2402 (2011); see also Stansbury v. California, 511 U.S. 318 (1994).

<sup>5</sup> 352 U.S. 191 (1957).

<sup>6</sup> 412 U.S. 218 (1973).

<sup>7</sup> 387 U.S. 1 (1967).

the interrogation and leave?" The Court agreed that for juveniles, age was also a factor to be given some weight.

The Court then looked to Kentucky's Unified Juvenile Code and the due process requirements contained therein. The Court agreed that N.C. was in custody under the facts given. Under Kentucky law, KRS 610.200, when a peace officer takes a child into custody for an offense, the officer "shall immediately inform the child of his constitutional rights and afford him the protections required thereunder...." As such, once the Court determined that N.C. was in the custody of the SRO, he was entitled to have been informed of his rights, including those under Miranda.

The Court noted that "on its face," this was a school discipline matter and N.C. had "no reason to believe that he was facing criminal charges." The pills were his legal prescription. Although under Kentucky law, he did commit a crime by "transferring" the pills, "there is nothing to indicate that he knew this." Only discipline/expulsion was discussed with the assistant principal. Only after he confessed was N.C. told that he had committed a crime. The Court noted that the assistant principal had admitted to having a "loose routine" with the SRO and that they had done such questioning "in tandem" before. The Court stated also that "no reasonable student ... would have believed that he was at liberty to remain silent, or to leave, or that he was even admitting to criminal responsibility under these circumstances." The Court acknowledged that had N.C. been over 18, the statements would not have been admissible. The Court observed that Glass was "acting in concert with the SRO," which made this situation "state action by law enforcement."

The Court agreed that "safeguarding children in our schools and maintaining appropriate discipline is an issue of paramount public importance." However, when a student is "questioned with more than school discipline in mind, there was a confluence of the student's rights and the needs of the school." The shift from "traditional in-school discipline toward greater reliance on juvenile justice interventions," even for "common school misbehavior," has led to students being put in contact with juveniles who have committed more serious offenses. "Such policies, which emphasize criminal charges, can serve to change the nature of questioning a student for purposes of school discipline into a criminal interrogation."

The Court stated that "to the extent that school safety is involved, school officials must be able to question students to avoid potential harm to that student and other students and school personnel." However, "when that questioning is done in the presence of law enforcement, for the additional purposes of obtaining evidence against the student to use in placing a criminal charge, the student's personal rights must be recognized."

The Court agreed it was not reasonable to expect school officials “to understand all the ramifications” of such questioning, but “trained law enforcement is another matter.” The Court noted that the “only viable reason to have law enforcement in the schools is to be able to assert peacekeeping and custodial authority over anyone who behaves in such a way that disorder ensues or a law is broken.”

In short, the Court stated:

Administering school discipline does not require the participation of law enforcement. Administering the law does.

The Court summed up the balancing act, noting that “school officials may question freely for school discipline and safety purposes, but any statement obtained may not be used against a student as a basis for a criminal charge when law enforcement is involved or if the principal is working in concert with law enforcement in obtaining incriminating statements, unless the student is given the Miranda warnings and makes a knowing, voluntary statement after the warnings have been given.” The Court agreed that in some cases, the presence of the SRO or other law enforcement officer “will maintain order and create a safer environment for the administrator and the student.” However, it continued, “statements obtained without giving Miranda warnings are subject to suppression if a criminal charge is brought.”

The Court ruled that the statements must be suppressed and reversed the conditional plea.

**NOTE:** Although not binding in this matter, this opinion included a concurring opinion that addressed the “public safety exception” recognized in New York v. Quarles.<sup>8</sup> Under Quarles, certain statements made prior to Miranda might be admitted when limited to the need to resolve an immediate safety issue, such as the location of a weapon. In addition, in a lengthy dissent, one of the justices discussed the SRO program and the interaction between the school, the SRO and the law enforcement agency for which the officer works, if different from the school system. The Court characterized the situations as a “school official working with another school official who is required by law to be a law enforcement officer.” The justice noted that if Miranda warnings are given, it must be assumed “those rights will be invoked” and if this occurs, the safety of the school might be jeopardized.

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<sup>8</sup> 467 U.S. 649 (1984); See also Henry v. Com., 275 S.W.3d 194 (Ky. 2008).